BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

GARY A. BAIR	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,030,920
SWIFT TRANSPORTATION COMPANY	)	
Self-Insured Respondent	)	

ORDER

Respondent appealed the December 13, 2006, Order for Compensation entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for a July 4, 2006, accident. After considering the testimony and exhibits presented at a December 2006 preliminary hearing, Judge Avery granted claimant's request for both temporary total disability benefits and medical benefits.

Respondent contends Judge Avery erred. Respondent argues claimant should not receive any workers compensation benefits as his accident did not arise out of his employment. Instead, respondent argues claimant's accident occurred due to personal risks that were unrelated to his employment. Accordingly, respondent requests the Board to deny claimant's request for benefits.

Conversely, claimant contends the Order for Compensation should be affirmed. Claimant argues his accident is compensable under the Workers Compensation Act because his job increased his risk of accident and injury.

The only issue before the Board on this appeal is whether claimant's July 4, 2006, accident arose out of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the undersigned Board Member concludes that the December 13, 2006, Order for Compensation should be affirmed.

Respondent employed claimant as an over-the-road truck driver. On July 4, 2006, claimant sustained various injuries when he drove off the highway and wrecked his truck. Claimant recalls that immediately before the wreck he was listening to comedy from the *Redneck White and Blue Fourth of July Comedy Extravaganza* when he began laughing so hard tears began running down his cheeks. The last thing he remembers before regaining consciousness following the wreck is commencing to pull his truck to the side of the road. Unfortunately, claimant is unable to remember the comedian or the joke.

Following the accident, claimant was rushed for medical treatment. Over the course of treatment, the doctors concluded claimant had fainted. Claimant underwent various tests to try to determine the cause. One of claimant's physicians, a neurologist, eventually suspected that claimant had experienced a laughing syncope. According to claimant, the neurologist explained the phenomenon, as follows:

> I guess the definition of laugh syncope is the pressure in your chest gets -- increases so much from heavy breathing that it stops the blood returning to your heart momentarily enough to make you black out and he told me the combination of it being kind of warm out, and I drive with the window down, he said, you stated that you were having a cold, you felt a cold coming on, so your sinuses were plugged up restricting your breathing, and you had a big breakfast which kind of helps fill up your upper cavity so it actually reduces the amount of space you can breathe, and he said, the series of events together caused you to not have enough room to breathe sufficiently enough and it caused the pressure to increase and you blacked out.[1]

In short, Judge Avery concluded claimant's accident was incidental to his employment as the act of driving a truck on an interstate highway created a risk. Consequently, the Judge granted claimant's request for benefits. In the Order for Compensation, the Judge wrote, in part:

> To arise out of the claimant's employment, the injury must have some causal connection to employment. It is enough if the risk leading to the injury is incidental to the work duties. In this case the risk leading to the injury was the act of driving a truck for the respondent on an interstate highway. The court finds claimant's accidental injury arose out of his employment with the respondent.[2]

The undersigned Board Member agrees with the Judge's analysis and conclusion. In addition, a case directly on point is *Bennett*[3] in which Mr. Bennett was injured when he

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[1] P.H. Trans. at 14, 15.

[2] ALJ Order (Dec. 13, 2006) at 1 (citations omitted).

[3] *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992).

wrecked his vehicle after having a seizure. The Kansas Court of Appeals ruled that the conditions of Mr. Bennett's employment (driving the company vehicle) placed him in a position of increased risk and the increased risk provided the necessary causal connection between Mr. Bennett's injury and his employment.

> In the present case, the fact that claimant was driving a company vehicle in the course of his employment subjected him to the additional risk of travel. This additional risk provided the necessary causal link between his injury and his employment, and compensation should have been allowed.[4]

Based upon the above, claimant's July 2006 accident is compensable under the Workers Compensation Act. Consequently, the Order for Compensation should be affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[5] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

WHEREFORE, the undersigned Board Member affirms the December 13, 2006, Order for Compensation entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of February, 2007.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Frederick J. Greenbaum, Attorney for Respondent
Brad E. Avery, Administrative Law Judge

[4] *Id.* at Syl. ¶ 3.

[5] K.S.A. 44-534a.